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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JENS LAURVIG HAUGAARD

Appeal 2009-014821
Application 10/570,764
Technology Center 3700

Before: JOHN C. KERINS, KEN B. BARRETT, and
PHILLIP J. KAUFFMAN, *Administrative Patent Judges.*

KAUFFMAN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellant seeks review of the rejection of claims 9-21 under 35 U.S.C. § 103(a) as unpatentable over Stumpmeier (US 4,080,983; issued May 28, 1978). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

THE INVENTION

Appellant's claimed invention relates to "a construction-kit system having at least one primary valve block with at least two groups of connecting lines all of which are interconnected at one point by a connecting line of one group as to conduct fluid." Spec. 1. Independent claim 9, reproduced below, is representative of the claimed subject matter (emphasis added):

9. A modular hydraulic system, comprising:
 - at least one primary valve block;
 - at least first and second groups in the primary valve block of connecting lines all connected in fluid communication at one point by a connecting line of said first group;
 - at least two other connecting lines of said first group being connected in fluid communication to a respective connection line of said second group;
 - at least three first dummy components for receiving definable valve components connected to the connecting lines of said second group; and*
 - at least two second dummy components connected between a common connecting line of said second group and another associated connecting line of said second group.*

ISSUE

Has the Examiner established a prima facie case of obviousness regarding independent claim 9?

ANALYSIS

The Examiner's conclusion that the subject matter of claim 9 would have been obvious over Stumpmeier is based on the generalization that the modular hydraulic system of claim 9 "can be potentially created" from Stumpmeier's manifold 1 (at least one primary valve block), first group of connecting lines (transverse bore 8), second group of connecting lines (longitudinal channels A, B, F, P, and T), and distributor modules (dummy components). Ans. 3-4, and 6.

The findings that underlie this conclusion are based on a potential to create the claimed subject matter rather than identification of a particular embodiment or a proposed modification of a specific embodiment that meets the claim terms. For example, the Examiner's finding that Stumpmeier's distributor modules correspond to the claimed dummy components does not distinguish between first and second dummy components. Ans. 3-4. Further, the finding does not identify the number of manifolds included in the proposed combination, nor identify the quantity, configuration, or position of the distributor modules within the intersections of transverse bore 8 (the first group of connecting lines) and the longitudinal channels (the second group of connecting lines). This lack of specificity is particularly troubling because, as the Examiner points out, "[t]here are innumerable different circuits that can be created with the apparatus disclosed by Stumpmeier." Ans. 6.

“The Examiner has the initial burden to set forth the basis for any rejection so as to put the patent applicant on notice of the reasons why the applicant is not entitled to a patent on the claim scope that he seeks – the so-called ‘*prima facie* case.’” *Ex Parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (citation omitted); *see also, In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (provisions of 35 U.S.C. § 132 violated when rejection is so uninformative that applicant is prevented from recognizing and seeking to counter grounds for rejection).

Here, the Examiner does not set forth findings that: (1) Stumpmeier discloses at least three first dummy components for receiving definable valve components connected to the connecting lines of the second group, or (2) Stumpmeier discloses at least two second dummy components connected between a common connecting line of the second group and another associated connecting line of the second group, as called for in claim 9. The Examiner does not adequately articulate findings to support a conclusion that a system with these features would have been obvious to a person of ordinary skill in the art. We have no factual findings to review regarding these limitations of claim 9, and thus, we are persuaded by Appellant that the Examiner has not made a proper *prima facie* case of obviousness. *See Reply Br. 2.*

As such, we are constrained to reverse the rejection of independent claim 9 and its dependent claims 10-21.

CONCLUSION

The Examiner failed to establish a *prima facie* case of obviousness regarding independent claim 9.

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DECISION

We reverse the Examiner's decision to reject claims 9-21.

REVERSED

nlk